

HOUSE BILL 1079

A1
HB 1262/09 – ECM

11r0715

By: **Delegates Hucker, Anderson, Arora, Beidle, Bobo, Busch, Carr, Clagett, Cullison, Dumais, Elliott, Feldman, Frick, Frush, George, Gilchrist, Gutierrez, Haddaway–Ricchio, Holmes, Hubbard, Kach, Kaiser, A. Kelly, Kipke, Kramer, Krebs, Lafferty, Lee, Luedtke, McIntosh, A. Miller, Murphy, Myers, Pena–Melnik, Pendergrass, Proctor, Reznik, S. Robinson, Rosenberg, Serafini, Simmons, Smigiel, Tarrant, F. Turner, V. Turner, and Zucker**

Introduced and read first time: February 11, 2011

Assigned to: Economic Matters

A BILL ENTITLED

1 AN ACT concerning

2 **Alcoholic Beverages – Direct Wine Shipper’s Permit**

3 FOR the purpose of repealing provisions that provide for a direct wine seller’s permit
4 and establishing a new direct wine shipper’s license to be issued by the Office of
5 the Comptroller to certain persons in or outside the State; requiring a person to
6 be licensed before the person may engage in shipping wine directly to a resident
7 in the State; requiring a direct wine shipper to perform certain actions;
8 prohibiting a direct wine shipper from performing certain actions; providing for
9 the qualifications and requirements of license applicants; providing for the fee
10 and renewal of a license; specifying certain requirements and conditions to
11 complete delivery of and to receive a direct shipment of wine; requiring a
12 common carrier to take certain actions and prohibiting a common carrier from
13 taking certain actions; authorizing the Office of the Comptroller to adopt certain
14 regulations; prohibiting a person without a license from shipping wine directly
15 to consumers in the State; providing a certain exception to a certain licensing
16 provision; providing a certain penalty; defining certain terms; altering certain
17 definitions; requiring the Comptroller to submit a certain report to the General
18 Assembly on or before a certain date; requiring that the report include certain
19 information; making the provisions of this Act severable; and generally relating
20 to the establishment of a direct wine shipper’s license.

21 BY repealing

22 Article 2B – Alcoholic Beverages

23 Section 7.5–101 through 7.5–110 and the title “Title 7.5. Direct Wine Seller’s
24 Permit”

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 Annotated Code of Maryland
2 (2005 Replacement Volume and 2010 Supplement)

3 BY repealing and reenacting, with amendments,
4 Article 2B – Alcoholic Beverages
5 Section 2–101(b)(1)(i), 9–102(a), and 15–204(b)
6 Annotated Code of Maryland
7 (2005 Replacement Volume and 2010 Supplement)

8 BY adding to
9 Article 2B – Alcoholic Beverages
10 Section 2–101(y); and 7.5–101 through 7.5–114 to be under the new title “Title
11 7.5. Direct Wine Shipper’s Permit”
12 Annotated Code of Maryland
13 (2005 Replacement Volume and 2010 Supplement)

14 BY repealing and reenacting, without amendments,
15 Article – Tax – General
16 Section 5–101(a)
17 Annotated Code of Maryland
18 (2010 Replacement Volume)

19 BY repealing and reenacting, with amendments,
20 Article – Tax – General
21 Section 5–101(f), 5–201(d), and 13–825(b)
22 Annotated Code of Maryland
23 (2010 Replacement Volume)

24 BY adding to
25 Article – Tax – General
26 Section 13–825(i)
27 Annotated Code of Maryland
28 (2010 Replacement Volume)

29 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF
30 MARYLAND, That Section(s) 7.5–101 through 7.5–110 and the title “Title 7.5. Direct
31 Wine Seller’s Permit” of Article 2B – Alcoholic Beverages of the Annotated Code of
32 Maryland be repealed.

33 SECTION 2. AND BE IT FURTHER ENACTED, That the Laws of Maryland
34 read as follows:

35 **Article 2B – Alcoholic Beverages**

36 2–101.

37 (b) (1) (i) The Office of the Comptroller shall collect a fee for the
38 issuance or renewal of the following permits:

1 1. \$50 for a solicitor’s permit, an individual storage
2 permit, a nonresident winery permit, or a commercial nonbeverage permit;

3 2. \$75 for a public storage permit, a public
4 transportation permit, or an import and export permit;

5 3. \$200 for a public storage and transportation permit, a
6 nonresident dealer’s permit, a resident dealer’s permit, or a bulk transfer permit;

7 4. \$400 for a family beer and wine facility permit; and

8 5. ~~[\$10]~~ **\$100** for a direct wine ~~[seller’s permit]~~
9 **SHIPPER’S PERMIT; AND**

10 6. **\$100 FOR A COMMON CARRIER PERMIT.**

11 **(Y) (1) THE OFFICE OF THE COMPTROLLER MAY ISSUE A COMMON**
12 **CARRIER PERMIT TO A PERSON WHO MEETS THE DEFINITION OF A “COMMON**
13 **CARRIER” UNDER § 7.5–101 OF THIS ARTICLE.**

14 **(2) THE HOLDER OF A COMMON CARRIER PERMIT MAY DELIVER**
15 **WINE FROM A LOCATION INSIDE OR OUTSIDE THE STATE TO A CONSUMER IN**
16 **THE STATE FOR THE CONSUMER’S PERSONAL USE.**

17 **TITLE 7.5. DIRECT WINE SHIPPER’S PERMIT.**

18 **7.5–101.**

19 **(A) IN THIS TITLE THE FOLLOWING WORDS HAVE THE MEANINGS**
20 **INDICATED.**

21 **(B) (1) “COMMON CARRIER” MEANS A BUSINESS ENTITY THAT HOLDS**
22 **ITSELF OUT AS BEING AVAILABLE TO THE PUBLIC TO TRANSPORT IN**
23 **INTERSTATE OR FOREIGN COMMERCE FOR COMPENSATION ANY CLASS OF**
24 **PASSENGER OR PROPERTY.**

25 **(2) “COMMON CARRIER” DOES NOT INCLUDE A BUSINESS ENTITY**
26 **THAT TRANSPORTS ONLY PROPERTY IT OWNS OR THAT IS CONSIGNED TO IT.**

27 **(C) “DIRECT WINE SHIPPER” MEANS THE HOLDER OF A DIRECT WINE**
28 **SHIPPER’S PERMIT ISSUED UNDER THIS TITLE.**

1 **3. A DESIGNATED MARYLAND AGENT OF A BRAND**
2 **OWNER; AND**

3 **(3) PAY A FEE OF \$300.**

4 **(B) THE OFFICE OF THE COMPTROLLER SHALL ISSUE A DIRECT WINE**
5 **SHIPPER'S PERMIT TO EACH APPLICANT WHO MEETS THE REQUIREMENTS OF**
6 **THIS TITLE FOR THE PERMIT.**

7 **7.5-105.**

8 **A DIRECT WINE SHIPPER'S PERMIT ENTITLES THE HOLDER TO SELL WINE**
9 **THROUGH A HOLDER OF A COMMON CARRIER PERMIT TO A CONSUMER BY**
10 **RECEIVING AND FILLING ORDERS THAT THE CONSUMER TRANSMITS BY**
11 **ELECTRONIC OR OTHER MEANS.**

12 **7.5-106.**

13 **THE TERM OF A DIRECT WINE SHIPPER'S PERMIT IS 1 YEAR AND BEGINS**
14 **ON THE DAY THE COMPTROLLER ISSUES THE PERMIT.**

15 **7.5-107.**

16 **(A) A DIRECT WINE SHIPPER SHALL:**

17 **(1) ENSURE THAT ALL CONTAINERS OF WINE SHIPPED DIRECTLY**
18 **TO A CONSUMER IN THE STATE ARE CONSPICUOUSLY LABELED WITH:**

19 **(I) THE NAME OF THE DIRECT WINE SHIPPER;**

20 **(II) THE NAME AND ADDRESS OF THE CONSUMER WHO IS**
21 **THE INTENDED RECIPIENT;**

22 **(III) THE WORDS "CONTAINS ALCOHOL: SIGNATURE OF**
23 **PERSON AT LEAST 21 YEARS OF AGE REQUIRED FOR DELIVERY"; AND**

24 **(IV) THE STATEMENT "AN AGENT OF A COMMON CARRIER**
25 **SHALL DELIVER THIS CONTAINER ONLY TO A PERSON WHO IS AT LEAST 21**
26 **YEARS OLD. AN AGENT WHO VIOLATES THIS PROVISION IS GUILTY OF A**
27 **MISDEMEANOR AND ON CONVICTION IS SUBJECT TO IMPRISONMENT NOT**
28 **EXCEEDING 2 YEARS OR A FINE NOT EXCEEDING \$3,000 OR BOTH.";**

1 **(2) REPORT QUARTERLY TO THE OFFICE OF THE COMPTROLLER**
2 **THE TOTAL AMOUNT OF WINE, BY TYPE, SHIPPED IN THE STATE, THE PRICE**
3 **CHARGED, AND THE NAME, ADDRESS, AND BIRTH DATE OF EACH PURCHASER;**

4 **(3) FILE A QUARTERLY TAX RETURN IN ACCORDANCE WITH §**
5 **5-201(D) OF THE TAX – GENERAL ARTICLE;**

6 **(4) PAY QUARTERLY TO THE OFFICE OF THE COMPTROLLER ALL**
7 **SALES TAXES AND EXCISE TAXES DUE ON SALES TO CONSUMERS IN THE STATE,**
8 **AND CALCULATE THE TAXES AS IF THE SALE WERE MADE AT THE DELIVERY**
9 **LOCATION;**

10 **(5) ALLOW THE OFFICE OF THE COMPTROLLER TO PERFORM AN**
11 **AUDIT OF THE DIRECT WINE SHIPPER’S RECORDS ON REQUEST; AND**

12 **(6) CONSENT TO THE JURISDICTION OF THE OFFICE OF THE**
13 **COMPTROLLER OR OTHER STATE UNIT AND THE STATE COURTS CONCERNING**
14 **ENFORCEMENT OF THIS SECTION AND ANY RELATED LAW.**

15 **(B) A DIRECT WINE SHIPPER MAY NOT:**

16 **(1) SHIP MORE THAN 18 9-LITER CASES OF WINE ANNUALLY TO**
17 **ANY ONE CONSUMER;**

18 **(2) CAUSE WINE TO BE DELIVERED ON SUNDAY TO AN ADDRESS**
19 **IN THE STATE; OR**

20 **(3) SHIP LESS THAN ONE 9-LITER CASE OF WINE IN A SINGLE**
21 **DELIVERY TO AN ADDRESS.**

22 **7.5-108.**

23 **(A) A DIRECT WINE SHIPPER MAY ANNUALLY RENEW ITS PERMIT IF THE**
24 **DIRECT WINE SHIPPER:**

25 **(1) IS OTHERWISE ENTITLED TO HAVE A DIRECT WINE SHIPPER’S**
26 **PERMIT;**

27 **(2) PROVIDES TO THE OFFICE OF THE COMPTROLLER A COPY OF**
28 **ITS CURRENT PERMIT; AND**

29 **(3) PAYS TO THE OFFICE OF THE COMPTROLLER A RENEWAL FEE**
30 **OF \$200.**

1 **(B) THE OFFICE OF THE COMPTROLLER MAY DENY A RENEWAL**
2 **APPLICATION OF A DIRECT WINE SHIPPER WHO FAILS TO:**

3 **(1) FILE A TAX RETURN REQUIRED UNDER THIS TITLE;**

4 **(2) PAY A FEE OR TAX WHEN DUE; OR**

5 **(3) AFTER RECEIVING NOTICE, COMPLY WITH A PROVISION OF**
6 **THIS ARTICLE OR A REGULATION THAT THE OFFICE OF THE COMPTROLLER**
7 **ADOPTS.**

8 **7.5-109.**

9 **(A) TO RECEIVE A DIRECT SHIPMENT OF WINE, A CONSUMER IN THE**
10 **STATE SHALL BE AT LEAST 21 YEARS OLD.**

11 **(B) A PERSON WHO RECEIVES A SHIPMENT OF WINE SHALL USE THE**
12 **SHIPMENT FOR PERSONAL CONSUMPTION ONLY AND MAY NOT RESELL IT.**

13 **7.5-110.**

14 **(A) A PERSON SHALL BE ISSUED A COMMON CARRIER PERMIT BEFORE**
15 **THE PERSON MAY ENGAGE IN TRANSPORTING WINE FROM A DIRECT WINE**
16 **SHIPPER TO A CONSUMER.**

17 **(B) TO COMPLETE DELIVERY OF A SHIPMENT, THE COMMON CARRIER**
18 **SHALL REQUIRE FROM A CONSUMER AT THE ADDRESS LISTED ON THE SHIPPING**
19 **LABEL:**

20 **(1) THE SIGNATURE OF THE CONSUMER; AND**

21 **(2) PHOTOGRAPHIC IDENTIFICATION THAT:**

22 **(I) SHOWS THAT THE CONSUMER IS AT LEAST 21 YEARS**
23 **OLD; AND**

24 **(II) IS A CURRENT AND VALID:**

25 **1. UNITED STATES PASSPORT OR UNITED STATES**
26 **PASSPORT CARD;**

27 **2. PERMANENT RESIDENT CARD OR ALIEN**
28 **REGISTRATION RECEIPT CARD (FORM 1551);**

1 **3. EMPLOYMENT AUTHORIZATION DOCUMENT THAT**
2 **CONTAINS A PHOTOGRAPH (FORM I-766); OR**

3 **4. DRIVER'S LICENSE OR IDENTIFICATION CARD**
4 **THAT CONTAINS A PHOTOGRAPH AND IS A STATE, POSSESSION, OR**
5 **COMMONWEALTH OF THE UNITED STATES OR THE DISTRICT OF COLUMBIA.**

6 **(C) A COMMON CARRIER:**

7 **(1) SHALL REFUSE DELIVERY WHEN THE INTENDED RECEIVING**
8 **CONSUMER APPEARS TO BE UNDER 21 YEARS OLD OR REFUSES TO PRESENT**
9 **VALID IDENTIFICATION;**

10 **(2) SHALL REQUIRE THAT EACH SUPERVISOR OF ITS AGENTS OR**
11 **EMPLOYEES WHO MAKE DELIVERIES TO CONSUMERS UNDER THIS TITLE**
12 **COMPLETE TRAINING IN AN ALCOHOL AWARENESS PROGRAM UNDER TITLE 13**
13 **OF THIS ARTICLE OR A COMPARABLE PROGRAM THAT THE STATE**
14 **COMPTROLLER APPROVES;**

15 **(3) MAY NOT DELIVER A SHIPMENT IN THE STATE TO A POST**
16 **OFFICE BOX OR AN ELEMENTARY SCHOOL, SECONDARY SCHOOL, COLLEGE, OR**
17 **UNIVERSITY; AND**

18 **(4) MAY NOT ACCEPT CASH OR A MONEY ORDER AS PAYMENT.**

19 **7.5-111.**

20 **A COMMON CARRIER SHALL REPORT QUARTERLY TO THE OFFICE OF THE**
21 **COMPTROLLER:**

22 **(1) THE DATE OF EACH DELIVERY OF WINE IN THE STATE; AND**

23 **(2) THE NAME AND ADDRESS OF THE DIRECT WINE SHIPPER AND**
24 **THE NAME, ADDRESS, AND BIRTH DATE OF THE RECEIVING CONSUMER OF EACH**
25 **DELIVERY.**

26 **7.5-112.**

27 **THE OFFICE OF THE COMPTROLLER MAY ADOPT REGULATIONS TO CARRY**
28 **OUT THIS TITLE.**

29 **7.5-113.**

1 **A BUSINESS ENTITY WITHOUT A DIRECT WINE SHIPPER'S PERMIT MAY**
2 **NOT SHIP WINE DIRECTLY TO CONSUMERS IN THE STATE.**

3 **7.5-114.**

4 **A PERSON WHO VIOLATES THIS TITLE IS GUILTY OF A MISDEMEANOR AND**
5 **ON CONVICTION IS SUBJECT TO IMPRISONMENT NOT EXCEEDING 2 YEARS OR A**
6 **FINE NOT EXCEEDING \$3,000 OR BOTH.**

7 9-102.

8 (a) No more than one license provided by this article, except by way of
9 renewal or as otherwise provided in this section, shall be issued in any county or
10 Baltimore City, to any person, or for the use of any partnership, corporation,
11 unincorporated association, or limited liability company, in Baltimore City or any
12 county of the State, and no more than one license shall be issued for the same
13 premises except as provided in §§ 2-201 through 2-208, 2-301, [and] 6-701, **AND**
14 **TITLE 7.5** of this article, and nothing herein shall be construed to apply to §
15 6-201(r)(4), (15), (17), and (18), § 7-101(b) and (c), § 8-202(g)(2)(ii) and (iii), § 8-217(e),
16 § 8-508, § 8-902, § 9-217(b-1), or § 12-202 of this article.

17 15-204.

18 (b) (1) Provided, that in Montgomery County no person, firm, or
19 corporation shall keep for sale any alcoholic beverage not purchased from the
20 Department of Liquor Control for Montgomery County, provided, however, that
21 nothing in this subsection shall apply to a holder of a Class F license or a holder of a
22 Class 1 beer, wine and liquor, Class 2 wine and liquor, Class 3 beer and wine, Class 4
23 beer, or Class 5 wine wholesaler's license, who may not sell or deliver any alcoholic
24 beverage in Montgomery County for resale except to a county liquor dispensary.

25 (2) Notwithstanding paragraph (1) of this subsection:

26 (i) **1.** A holder of a Class 6 limited wine wholesaler's license
27 or of a nonresident winery permit may sell or deliver wine directly to a county liquor
28 dispensary, restaurant, or other retail dealer in Montgomery County; and

29 [(ii)] **2.** A county liquor dispensary, restaurant, or other retail
30 dealer in Montgomery County may purchase wine directly from a holder of a Class 6
31 limited wine wholesaler's license or of a nonresident winery permit; **AND**

32 **(II) A HOLDER OF A DIRECT WINE SHIPPER'S PERMIT MAY**
33 **SHIP WINE DIRECTLY TO A CONSUMER IN MONTGOMERY COUNTY.**

34

1 5–101.

2 (a) In this title the following words have the meanings indicated.

3 (f) “Direct wine [seller] **SHIPPER**” has the meaning stated in Article 2B, §
4 7.5–101 of the Code.

5 5–201.

6 (d) [(1)] A person who is a direct wine [seller] **SHIPPER** shall file with the
7 Office of the Comptroller [an annual] **A QUARTERLY** tax return.

8 [(2)] The annual tax return shall be due no later than October 15 of
9 each year covering the previous 12 calendar months ending September 30.]

10 13–825.

11 (b) The Comptroller shall require:

12 (1) a manufacturer, wholesaler, or nonresident winery permit holder
13 who sells or delivers beer or wine to retailers in the State to post security for the
14 alcoholic beverage tax:

15 (i) in an amount not less than:

16 1. \$1,000 for beer; and

17 2. \$1,000 for wine; and

18 (ii) if the alcoholic beverage tax on beer and wine paid in any 1
19 month exceeds \$1,000, in an additional amount at least equal to the excess; [and]

20 (2) a manufacturer or wholesaler who sells or delivers any distilled
21 spirits or any wine and distilled spirits in the State to post a security for the alcoholic
22 beverage tax:

23 (i) in an amount not less than \$5,000; and

24 (ii) in an additional amount:

25 1. equal to twice the amount of its largest monthly
26 alcoholic beverage tax liability for wine and distilled spirits in the preceding calendar
27 year less \$5,000; or

28 2. if the information for the preceding calendar year is
29 not available or cannot be provided, equal to the amount that the Comptroller
30 requires; **AND**

1 **(3) EXCEPT AS PROVIDED IN SUBSECTION (I) OF THIS SECTION, A**
2 **HOLDER OF A DIRECT WINE SHIPPER'S PERMIT TO POST SECURITY FOR THE**
3 **ALCOHOLIC BEVERAGE TAX IN AN AMOUNT NOT LESS THAN \$3,000.**

4 **(I) A PERSON NEED NOT POST SECURITY UNDER SUBSECTION (B)(3) OF**
5 **THIS SECTION IF:**

6 **(1) THE PERSON IS A MANUFACTURER OR WHOLESALER THAT**
7 **HAS POSTED SECURITY UNDER SUBSECTION (B)(2) OF THIS SECTION; OR**

8 **(2) NOT LATER THAN THE THIRD ANNIVERSARY OF ISSUING A**
9 **PERMIT TO THE PERSON, THE COMPTROLLER:**

10 **(I) DETERMINES THAT THE PERSON HAS A SUBSTANTIAL**
11 **RECORD OF TAX AND REPORTING COMPLIANCE; AND**

12 **(II) WAIVES THE SECURITY REQUIREMENT.**

13 SECTION 3. AND BE IT FURTHER ENACTED, That:

14 (a) On or before December 31, 2012, the Comptroller shall submit a report to
15 the General Assembly, in accordance with § 2-1246 of the State Government Article,
16 on the effects that the policy of allowing the direct shipment of wine, as enacted by
17 this Act, has had in the State.

18 (b) The report shall include:

19 (1) an evaluation of the fiscal and tax impacts of direct wine shipment;

20 (2) a study of whether access by underage drinkers to wine has been
21 affected;

22 (3) the resulting benefits and costs to consumers; and

23 (4) the impact that direct wine shipment has had on in-state wineries,
24 alcoholic beverages licensees, and other local businesses.

25 SECTION 4. AND BE IT FURTHER ENACTED, That if any provision of this
26 Act or the application thereof to any person or circumstance is held invalid for any
27 reason in a court of competent jurisdiction, the invalidity does not affect other
28 provisions or any other application of this Act which can be given effect without the
29 invalid provision or application, and for this purpose the provisions of this Act are
30 declared severable.

1 SECTION 5. AND BE IT FURTHER ENACTED, That this Act shall take effect
2 July 1, 2011.